IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :9-2-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

Writ Appeal No.2088 of 2004
W.A.M.P.Nos.3841, 7436 of 2004
and
Writ Petition No.10753 of 2004
W.P.M.P.No.12614 of 2004

Y.M.C.A. College Sports
Higher Secondary School (Sports Wing),
rep.by its Correspondent,
Nandanam,
Chennai - 600 035. ... Appellant in W.A.2088/2004
& Petitioner in W.P.10753/2004

Vs.

1. The Presiding Officer,
Principal Labour Court,
Chennai - 600 104

2. P.Rajamanickam ... Respondents in writ appeal
as well as in writ petition

Writ appeal filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 21.4.2004 in W.P.M.P.No.12614 of 2004 praying this Court to stay the enforcement of implementation and operation of the Award passed in I.A.No. 419/1995 by the Ist Respondent on 23/10/2003 pending in W.P.No.10753 of 2004.

W.P.No.10753 of 2004 is filed under Article 226 of Constitution of India, praying this Court to issue a writ of certiorari calling for the records relating to the issuance of the award dated 23.10.2003, passed by the first respondent in I.D.No.419 of 1995 and quash the same.

For Appellant/Petitioner : Mr.N.S.Sivam,
for Mr.V.Sankaranarayanan

1st Respondent : Court

For 2nd Respondent : Mr.K.M.Ramesh

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COMMON JUDGMENT

N. PAUL VASANTHAKUMAR, J.

This writ appeal is directed against the order passed in W.P.M.P.No.12614 of 2004 in W.P.No.10753 of 2004 dated 21.4.2004 wherein the learned single Judge directed the appellant to deposit the entire backwages as awarded by the Labour Court within eight weeks.

2. When the interim application in the writ appeal was heard on 15.12.2006, the First Bench of this Court directed the Registry to post the writ petition also along with the writ appeal. Pursuant to the said direction, W.P.No.10753 of 2004 was also listed along with W.A.No.2088 of 2004 and both were heard by us. If we dispose of the writ petition, the writ appeal will become infructuous. Hence, we are dealing with W.P.No.10753 of 2004 in this judgment.

3. Prayer in the writ petition is to issue a writ of certiorari calling for the records relating to the issuance of the award dated 23.10.2003, passed by the first respondent in I.D.No.419 of 1995 and quash the same.

4. The brief facts as stated in the affidavit in support of the writ petition are as follows.

(a) Petitioner School was established in the year 1976 by the National Council of YMCA of India, New Delhi. The School is situated at Nandanam, Chennai. The School is a minority institution. Even though the National Council of YMCA of India is the Educational Agency, since the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1974 and the rules framed thereunder was sought to be given effect to, writ petitions were filed before this Court and a learned single Judge of this Court directed to accord minority status to the petitioner school, so that some of the provisions of the Act and Rules cannot be made applicable to the petitioner School.

(b) The Government of Tamil Nadu filed writ appeal against the said order of the learned single Judge and ultimately a Division Bench of this Court directed the District Educational Officer to decide the status of the petitioner school as to whether petitioner school could be treated as a minority institution and till such decision is taken, the minority status should not be disturbed as it is being enjoyed by the petitioner. Thereafter, the District Educational Officer passed an order rejecting the claim of the management and the said order was challenged before this Court and this Court again directed the District Educational Officer to give opportunity to the school to substantiate its claim of the minority status and pass fresh orders.

(c) Thereafter, the Chief Educational Officer passed an order stating that the petitioner School should approach the Civil Court to get

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declaration of its minority status. Hence the petitioner filed Civil Suit in C.S.No.348 of 1998 on the file of this Court and in O.A.No.230 of 1998 by order dated 30.4.1998, an interim order of status-quo was issued by the learned Judge observing that all along the petitioner School is enjoying minority status. Thus, the petitioner claims that the petitioner is a Christian Religious Minority School.

(d) The second respondent was appointed as a Marker in the petitioner School on 8.12.1980 and his services were regularised from 7.12.1982. The order of appointment was issued by the petitioner Management and the second respondent gave joining report to the Headmaster of the School on 9.12.1980. It is alleged that the second respondent involved in immoral activities, which was questioned by the management and the second respondent was given pardon by the Management. On 23.5.1986, a charge memo was issued to the second respondent, for which the second respondent gave an undertaking that he will behave well in in future and pleaded pardon. Accepting the same the said charge was not proceeded further.

(e) On 25.5.1990, allegations of theft were made against the second respondent and a complaint given by the Manager of the Triangular Tennis Trust was forwarded to the police for taking appropriate action under Criminal Law. The second respondent was suspended from service. Petitioner management also issued charge memo dated 6.9.1990 and an explanation was sought for. The second respondent filed W.P.No.10982 of 1990 and challenged the order of suspension and the same was dismissed by this Court on 19.7.1990 holding that the management has got power to proceed with the enquiry and there is no error in the order of suspension.

(f) After dismissal of the said writ petition, second respondent was directed to submit his explanation and the same having not been submitted, the management directed to conduct preliminary enquiry, for which also the second respondent failed to appear. A report was filed by the Committee on 20.12.1990, wherein the Committee recommended to conduct disciplinary proceeding against the second respondent. A notice was issued to the second respondent on 16.2.1991 to appear for enquiry and it was adjourned to 2.3.1991, on which date the second respondent appeared. Statements were recorded from the witnesses and the enquiry was adjourned to 5.3.1991. On that day also witnesses were made available and the second respondent did not choose to cross examine them. The Enquiry Officer gave a finding and stated that the charge was proved.

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(g) A show cause notice was issued on 9.12.1991 and called upon the second respondent and state as to why he should not be removed from service. The second respondent sent a reply on 14.12.1991. Thereafter the order of removal was passed on 22.9.1992. The writ petition filed by the second respondent in w.P.No.18980 of 1990, challenging the charge memo came up for final hearing on 5.11.1992 and the same was dismissed. According to the petitioner, even though the order of dismissal was passed on 22.9.1992, no step was taken by the second respondent to challenge the

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same for two and half years and thereafter he raised an industrial dispute. The conciliation attempt having been failed the second respondent raised I.D.No.419 of 1995 before the first respondent and prayed for cancelling the order of dismissal dated 22.9.1992.

(h) The petitioner management filed a detailed counter before the Labour Court and examined two witnesses and also marked 33 documents. The second respondent was also examined and he filed five documents. The Labour Court allowed the industrial dispute by passing an award on 23.10.2003 holding that non-employment of the second respondent is not justified and the second respondent is entitled to the relief of reinstatement with full backwages and other attendant benefits.

(i) The said award of the Labour Court is challenged in this writ petition mainly on the ground that the petitioner School being a minority school, the provisions of the Act and Rules cannot be applied against the petitioner management and I.D.No.419 of 1995 is also not maintainable and the Industrial Dispute having been raised after 32 months from the date of dismissal, the Labour Court should have dismissed the industrial dispute on the ground of delay and laches. It is also contended that if the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, are applicable, the petitioner ought to have filed appeal. It is further contended that the findings given by the Labour Court with regard to the status of the petitioner School is erroneous and the charge being theft of a manhole cover, the order of dismissal ought not to have been interfered with.

5. The second respondent filed counter affidavit stating that the second respondent was appointed by the management on 8.2.1981 as Marker and his services were regularised from 8.12.1982 and he was dismissed from service on 22.9.1992 by the management. The said order was challenged by raising I.D.No.419 of 1995. The domestic enquiry conducted was not in conformity to the principles of natural justice and the petitioner management denied opportunity to the second respondent to disprove the charge. The Labour Court came to the conclusion that the domestic enquiry was vitiated and no plea was made to adduce further evidence for proving the charge against the second respondent by the management and an award of reinstatement with all attendant benefits and continuity of service is ordered. It is also stated in the counter affidavit that the petitioner is an employee and the Industrial Disputes Act, 1947, will apply. Even if the petitioner school is a Christian minority institution, the Labour Court is having jurisdiction as per the judgment in C.M.C. Hospital Employees Union, Vellore, case and therefore the second respondent prayed for dismissal of the writ petition.

6. The learned cousnel for the petitioner argued that the second respondent having been appointed in a sanctioend post, the Labour Court cannot have any jurisdiction and if at all the second respondent is aggrieved, he could challenge the order of dismissal before this Court and in fact the second respondent challenged the order of suspension by filing

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W.P.No.10982 of 1990 before this Court and also the charge memo by filing W.P.No.18980 of 1990 before this Court and therefore the action of the second respondent in approaching the Labour Court is unsustainable. The learend cousnel also argued that the finding given by the Labour Court with regard to the character of the petitioner institution that it is not a minority institution is erroneous. The learned counsel further argued that there was un-reasonable delay in approaching the Labour Court, i.e, 32 months after dismissal, the second respondent raised the industrial dispute and non-consideration of the above aspect by the Labour Court while granting relief, vitiates the entire proceedings.

7. The learned counsel for the second respondent pointing out the averments made in the counter statement filed by the petitioner before the Labour Court submitted that the second respondent was appointed as Marker only by the management and not by the Director of Sports Development Authority. The power of appointment is vested with the management and salary alone is sanctioned by the Sports Development Authority. The power of appointment and termination of employee is vested with the management and the Sports Development Authority has nothing to do with the matter, except countersigning the order of the management. The learned counsel further submitted that no subsistence allowance was paid to the second respondent when the second respondent was kept under suspension. The second respondent being a non-teaching staff, is entitled to approach the Labour Court challenging the order of dismissal. Ultimately the learned counsel argued that there is no perversity in the order of the Labour Court and the writ petition is liable to be dismissed.

8. We have considered the rival submissions made by the learned counsel for the petitoner as well as the second respondent.

9. The fact that the second respondent was appointed in the petitioner School which is an aided school, is not in dispute. The post in which the second respondent is appointed is also a sanctioned post through G.O.Ms.No.1738 Education Department, dated 30.8.1980. The appointment order was issued by the management, the joining report was given by the second respondent to the petitioner management and therefore the appointing authority of the second respondent is only the petitioner management. The charge alleged against the second respondent is theft of manhole cover. The order of dismissal is also passed by the petitioner management. In the light of the said factual situation it has to be ascertained whether the second respondent is entitled to approach the Labour Court seeking reinstatement and other benefits by raising industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947.

10. The second respondent is a non-teaching staff, employed in the petitioner aided school. Whether a non-teaching staff of an educational institution is a workman or not, was considered by the Honourable Supreme Court in the decision reported in (2004) 1 SCC 755 (Ahmedabad Private Primary Teachers' Association v. Administrative Officer). In the said

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decision it is held that the teachers in the schools cannot be termed as employees under the Labour Laws so long as they are engaged in teaching. The said position is made clear in the decision reported in (1989) 1 LLJ 61 (Miss.A.Sundarambal v. Government of Goa, Daman and Diu and others) wherein the Honourable Supreme Court held thus,

> "The question for consideration is whether even after the inclusion of the above two classes of employees in the definition of the expression 'workman' in the Act a teacher in a school can be called a workman. We are of the view that the teachers employed by educational institutions whether they are imparting primary, secondary, graduate or post-graduate education, cannot be called as 'Workman' within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do, is only incidental to their principal work of teaching. We agree with the reasons given by the High Court for taking the view that teachers cannot be treated as 'Workmen' as defined under the Act. It is not possible to accept the suggestion that having regard to the object of the Act, all employees in an industry except those falling under the four exceptions (i) to (iv) in section 2(s) of the Act should be treated as workmen. The acceptance of this argument will render the words 'to do any skilled or unskilled manual, supervisory, technical or clerical work' meaningless."

11. 'Whether the educational institution is an industry or not', came up for consideration before the Honourable Supreme Court in the decision reported in (1978) 1 LLJ 349 (Bangalore Water Supply and Sewarage Board v. A.Rajappa). In the said decision, the educational institutions were held as industry and the non-teaching staff were held as workmen.

12. Similar issue was decided by the Honourable Supreme Court in the decision reported in 1988 (1) LLN 9 (C.M.C.Hospital Employees Union v. C.M.C. Vellore Association). In the said decision it is held that even against the minority institution, the Labour Court has got jurisdiction and it will not be an infringement on the fundamental right guaranteed under Article 30(1) of the Constitution of India. It is specifically held therein that the Christian Medical College Hospital, attached thereto constituted an industry and the Labour Court has got right to adjudicate

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the matter even against the minority institutions.

13. In view of the said pronouncement of the Apex Court, we are of the view that the first respondent Labour Court has got jurisdiction to entertain the industrial dispute and adjudicate the matter, as the second respondent is Marker, a non-teaching staff.

14. We have also perused the award of the Labour Court wherein the Labour Court found that the enquiry conducted against the second respondent was not conducted adopting the procedures. When such a finding is given, the petitioner management ought to have sought for permission to adduce more evidence to prove the charge against the second respondent. Admittedly petitioner management has not chosen to do so. The reason given by the Labour Court that MW-1 Major Victor, who gave deposition during enquiry was not in India during the time of the alleged incident and therefore he did not know anything directly. When the Labour Court found that the enquiry was not conducted fairly and properly it is incumbent on the petitioner management to adduce evidence and documents to prove the guilt of the second respondent and the same having been not opted, the Labour Court was left with no other option, except to give a finding that the termination is illegal and consequently ordered reinstatement with continuity of service.

15. Insofar as the award of full backwages and other attendant benefits are concerned, there is delay on the part of the second respondent in approaching the Labour Court. Hence the second respondent is not entitled to get salary for the above period i.e., from 22.9.1992 to the date of raising the industrial dispute i.e., June, 1995. Hence we are modifying the award of the Labour Court to the effect that the second respondent is not entitled to get backwages for the said period. However, he is entitled to get continuity of service. The second respondent is entitled to get backwages from June, 1995, as the petitioner has not proved that he was employed elsewhere from June, 1995 onwards.

16. Insofar as the finding that the petitioner is not a minority institution is concerned, the matter is pending before this Court in C.S.No.348 of 1998 and an interim order is also granted by this Court in favour of the petitioner management by order dated 30.4.1998. Hence the Labour Court is not justified in giving a finding that the petitioner school is not a minority school. Hence the said finding given by the Labour Court is set aside.

17. In view of our above referred findings, the writ petition is allowed partly by confirming the award of the Labour Court insofar as reinstatement with continuity of service and backwages from June, 1995. The writ petitioner management is directed to reinstate the second respondent with backwages from June, 1995 and continuity of service and other service benefits from the date of dismissal, within a period of four weeks from the date of receipt of copy of this order. The writ petition is partly allowed in the above terms. Connected miscellaneous petitions

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is closed.

18. In view of the disposal of W.P.No.10753 of 2004 as above, W.A.No.2088 of 2004 has become infructuous and the same is dismissed. Connected miscellaneous petitions are also dismissed.

vr

Sd/-
Assistant Registrar,

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Sub Assistant Registrar.

To

1.The Presiding Officer, Principal Labour Court,
Chennai - 600 104

+ One cc to Mr. V. Sankaranarayanan, Advocate SR 7847
AVA (co)
sg 15/2/07

Pre-Delivery Judgment in
W.A.No.2088 of 2004
& W.P.No.10753 of 2004

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